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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/828,226	04/09/2001	Kevin A. McIntyre	3598-2 (AMK)	5634
23117 7590 12/23/2008 NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203				
EXAMINER				
FELTEN, DANIEL S				
ART UNIT		PAPER NUMBER		
3696				
MAIL DATE		DELIVERY MODE		
12/23/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte:* KEVIN A. McINTYRE

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Appeal 2008-5603  
Application 09/828,226  
Technology Center 3600

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Mailed: December 23, 2008

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Before DALE M. SHAW, *Chief Appeals Administrator*  
SHAW, *Chief Appeals Administrator*.

ORDER REMANDING APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on July 29, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter requiring attention prior to docketing.

### CLARIFICATION OF CLAIMS

A review of the file finds that rejection of the claims as provided in the last Office action (Non-Final Rejection) mailed June 30, 2006, and the Examiner's Answer mailed March 21, 2007 are either unclear or are not consistent with additional claims set forth in the appellant's amendment to the claims filed on December 7, 2004.

In his June 30, 2006 Appeal Brief, the appellant states, "Appellant acknowledges that claims 4-7, 15, 16, 18-21, and 26-30 have not been rejected over prior art." App. Br. at 20.

A review of the Examiner's Answer finds that it is unclear as to the status of all the pending claims. In particular, the Answer is deficient on the status of claims 4-7, 15, 16 18-21 and 26-30, for it fails to indicate what the status is for these claims. Appropriate correction is required.

Clarification of the record is required for the status of all pending claims in the application.

Accordingly, it is ORDERED that the application be returned to the Examiner:

- 1) to vacate the Examiner's Answer mailed March 21, 2007;
- 2) to generate a new Examiner's Answer setting forth the correct Status of Claims to include claims 4-7, 15, 16, 18-21, and 26-30, and to correct other sections of the Answer as may be required;
- 3) to include the approval of the TC Director or his/her designee (as required for any new grounds of rejection); and
- 4) for such further action as may be required.

Appeal 2008-5603  
Application 09/828,226

If there are any questions pertaining to this dismissal, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

EWB

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